

REMARKS

Reconsideration of the application is respectfully requested.

I. Status of the Claims

Claims 1-9, 11-15 and 17-21 are pending.

Claim 16 is canceled without prejudice or disclaimer.

Claims 1-9, 11-15 and 17-21 are amended without the introduction of new matter.

II. Rejections under 35 U.S.C. § 102

In the outstanding Office Action, claims 1, 3-5, 7-9, 11, 13-15 and 17-20 were rejected under 35 U.S.C. § 102(b) as anticipated by Sites et al. (U.S. Patent No. 6,413,233 B1, herein “Sites”). Applicants respectfully traverse that rejection.

Independent claim 1 is directed to a blood treatment device, and amended to clarify subject matter recited. Specifically, amended claim 1 now recites, among others, the feature that “said ideal patient-specific blood parameter curve [is] obtained based on said blood parameter that is measured in real time in a blood treatment for said patient prior to said predetermined treatment of said patient.” Support for such feature is found in the specification at page 13, lines 18-22, for example.

The Examiner noted the argument of Applicants in the previous response that Sites does not disclose obtaining an ideal blood parameter curve through a previous blood treatment. However, the Examiner stated that such claim language is not found in claim 1.¹ In response, claim 1 is amended as noted above. Applicants submit that Sites does not disclose or suggest that “said ideal patient-specific blood parameter curve [is] obtained based on said blood parameter that is measured

in real time in a blood treatment for said patient prior to said predetermined treatment of said patient," as recited in amended claim 1.

Therefore, the present invention recited in amended claim 1 and claims 3-5 and 7-9 dependent therefrom are patentably distinguishable over Sites. With respect to claim 11, the present invention recited in amended independent claim 11 includes features substantially similar to the features recited in amended claim 1 to the extent discussed above. Thus, amended claim 11 and claims 13-15 and 17-20 dependent therefrom are patentably distinguishable over Sites at least for the above reasons advanced for amended claim 1.

Accordingly, Applicants respectfully request the withdrawal of the rejection of claims 1, 3-5, 7-9, 11, 13-15 and 17-20 based on Sites.

III. Rejections under 35 U.S.C. § 103

Claims 2, 6, 12, 16 and 21 were rejected under 35 U.S.C. § 103(a) as unpatentable over Sites in view of Osten et al. (U.S. Patent No. 5,830,133, herein "Osten"). Applicants respectfully traverse that rejection.

Claim 16 is canceled by the present response as noted above. Accordingly, the rejection of claim 16 is moot.

Applicants respectfully submit that claims 2 and 6, and claims 12 and 21, which are dependent from claims 1 and 11, respectively, are patentably distinguishable over the cited references at least for the reasons advanced for amended claims 1 and 11.

¹ See the outstanding Office Action at page 2, lines 6-10 in the remark 1.

With respect to Osten, the Examiner asserted that “Osten discloses real time monitoring of spectral data and the use of mathematical correlation (ideal curve correlation) in order to monitor hematocrit hemoglobin concentration,” and that “Osten discloses using a spectrometer to measure the spectra data of blood when a extracorporeal loop is initially formed, and this initial blood curve is compared to further and subsequent blood spectral data measurements within the extracorporeal loop.”²

In this regard, Applicants submit, as discussed in the previous response, that Osten merely describes prediction of a property of biological matter by observing a series of whole blood samples obtained from one or more animals of the same species. See, Osten, column 9, lines 14-21. Osten first obtains near-infrared spectra of a statistically significant number of samples of whole blood to establish a so-called “training set” for mathematical comparisons against individual additional unknown samples of other whole blood. Once the training set of NIR spectra has been established, the nature of the inter-relationship hematocrit and water content is statistically correlated to establish a source of comparison for predicting unknown samples. Osten, column 4, lines 6-21. Thus, Osten does not disclose or suggest that the ideal patient-specific blood parameter curve is obtained based on the blood parameter that is measured in real time *in a blood treatment for the patient prior to the predetermined treatment of the patient*, as recited in amended claim 1.

Even considering the cited references together, only the present specification teaches the features of amended claim 1 in which the ideal patient-specific blood parameter curve is obtained based on the blood parameter that is measured in real time in a blood treatment for the patient prior to the predetermined treatment of the patient. Thus, amended claim 1 and amended claim 11 that

² See the Office Action at page 2, the third line from the bottom to page 3, line 3.

includes substantially similar features thereto are patentably distinguishable over the cited references. Therefore, claims 2 and 6, and claims 12 and 21 dependent from claims 1 and 11, respectively, are patentably distinguishable over the combined teachings of the cited references at least for the above reasons advanced for amended claims 1 and 11.

Accordingly, Applicants respectfully request the withdrawal of the rejection of claims 2, 6, 12 and 21 based on the combined teachings of the cited references.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

The Examiner is respectfully requested to contact the undersigned at the telephone number indicated below once he has reviewed the proposed amendment if the Examiner believes any issue can be resolved through either a Supplemental Response or an Examiner's Amendment.

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Respectfully submitted,

By 
Hiroyuki Yasuda

Registration No.: 55,751
DARBY & DARBY P.C.
P.O. Box 5257
New York, New York 10150-5257
(212) 527-7700
(212) 527-7701 (Fax)
Attorneys/Agents For Applicant